

UNITED STATES OF AMERICA  
IN THE WESTERN DISTRICT OF MICHIGAN

United States of America,  
Plaintiff,

File No. 1:18-cr-166

v.

Hon. Paul L. Maloney  
U.S. District Court Judge

Daniel Dario Trevino (D-1)  
Defendant.

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Joel S. Fauson  
Assistant United States Attorney  
P.O. Box 208  
Grand Rapids, MI 49501-0208  
616-456-2404

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J. Nicholas Bostic P40653  
Attorney for Defendant  
909 N. Washington Ave.  
Lansing, MI 48906  
517-706-0132

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**DEFENDANT TREVINO'S TRIAL BRIEF**

Defendant Daniel Trevino submits the following trial brief addressing those legal issues which are apparent at this time:

1. Drug Quantity.

The Supreme Court held that the sentencing guidelines must be advisory to avoid a violation of the Sixth Amendment. *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). For those District Courts, however, that tend to apply the guideline ranges strictly, the loose treatment of a broad scope of conduct tends to increase a defendant's sentence without a jury making any determination. While the constitutional issue has been resolved, the practical problem remains. Defendant Trevino asserts that because the guidelines advise a higher sentence based upon certain thresholds of quantities of marihuana, the trial court should not allow assumptions about seized but untested quantities of "green, leafy material" and should not allow government witnesses to opine about the botanical make-up of any such material based on odor alone. While odor detected by a human or alerted to by a trained animal has been held to be

probable cause, it has never been held to establish proof beyond a reasonable doubt or a preponderance of the evidence.

2. Use of law enforcement officers as fact witnesses and expert witnesses.

There is a risk that a jury will view a police officer/expert's opinion as a fact when that witness also testifies as a fact witness. The Sixth Circuit has addressed this issue and requires a) a special instruction to the jury that cautions against the recognizes risks of giving improper weight before the testimony; b) a demarcation during the testimony of the fact portion and the opinion portion; and c) another instruction in the final charge. *United States v. Lopez-Medina*, 461 F.3d. 724, 743-745 (6<sup>th</sup> Cir. 2006). Mr. Trevino asks the Court to preclude use of witnesses in a dual role unless the government demonstrates a compelling need to have the same witness provide both forms of testimony.

Respectfully submitted,

8/11/2019

/s/ J. Nicholas Bostic  
J. Nicholas Bostic P40653  
Attorney for Defendant Trevino